

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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|---|---|---|
| DENIS BROCK and husband, JERRY BRANDT BROCK, |) | |
| |) | |
| |) | CIVIL ACTION NO.: 3:13-cv-1010 |
| Plaintiffs, |) | |
| |) | |
| v. |) | MDL No. 2419 |
| |) | Master Docket No. 1:13-md-2419-FDS |
| UNIFIRST CORPORATION, A/D/B/A |) | |
| UNICLEAN CLEANROOM |) | Honorable F. Dennis Saylor |
| SERVICES, SAINT THOMAS |) | |
| OUTPATIENT NEUROSURGICAL |) | |
| CENTER, LLC, HOWELL ALLEN |) | |
| CLINIC, A Professional Corporation, |) | <u>DEMAND FOR JURY TRIAL</u> |
| JOHN CULCLASURE, M.D., DEBRA |) | |
| SCHAMBERG, R.N., SAINT THOMAS |) | |
| WEST HOSPITAL formerly known as |) | |
| ST. THOMAS HOSPITAL, SAINT |) | |
| THOMAS NETWORK, SAINT |) | |
| THOMAS HEALTH, ASCENSION |) | |
| HEALTH and ASCENSION HEALTH |) | |
| ALLIANCE, |) | |
| |) | |
| Defendants. |) | |

**AMENDED SHORT FORM COMPLAINT
AGAINST UNAFFILIATED DEFENDANTS**

Plaintiffs, DENIS BROCK and husband, JERRY BRANDT BROCK, allege as follows:

FIRST COUNT

1. Pursuant to MDL Order No. 7, entered in In Re: New England Compounding Pharmacy, Inc. Products Liability Litigation, Master Docket No. 1:13-md-2419-FDS, the undersigned counsel hereby submits this Short Form Complaint and Jury Demand against the Defendants, and adopts and incorporates by reference the allegations in the Plaintiffs' Master Complaint, with attachments, and any and all amendments thereto.

2. Plaintiffs are residents of the State of Tennessee.

3. Plaintiffs bring this action:

[X] On behalf of herself/himself;

4. Plaintiffs assert that DENIS BROCK was administered New England Compounding Pharmacy, Inc. (“NECC”) drug methyprednisolone acetate (hereinafter referred to as “NECC drug”), causing injuries and damages.
5. The aforesaid administration of the NECC drug occurred on July 23, 2012, based upon the referral by the Howell Allen Clinic in Nashville, Tennessee, and was injected at Saint Thomas Outpatient Neurosurgical Center, LLC, in Nashville, Tennessee. Saint Thomas Outpatient Neurosurgical Center, LLC, is operated jointly by Saint Thomas Network, Saint Thomas Health and the Howell Allen Clinic. Dr. John Culclasure, M.D., and Debra Schamberg, R.N., were employees of the Howell Allen Clinic and Saint Thomas Outpatient Neurosurgical Center and were responsible for the purchase of the NECC drug injected into DENIS BROCK. Saint Thomas Outpatient Neurosurgical Center, LLC, is located on the campus of Saint Thomas West Hospital, formerly known as St. Thomas Hospital, and is the apparent agent of Saint Thomas West Hospital. At all relevant times, Ascension Health and Ascension Health Alliance owned, operated, managed and/or simply did business, in part, as Saint Thomas Health and/or Saint Thomas Network and/or Saint Thomas West Hospital.
6. Dr. John Culclasure, Nurse Debra Schambert, Saint Thomas Outpatient Neurosurgical Center, LLC., Howell Allen Clinic, A Professional Corporation, Saint Thomas West Hospital, St. Thomas Network, Saint Thomas Health, Ascension Health and Ascension Health Alliance are hereinafter collectively referred to as “Clinic Related Defendants.”
7. Plaintiffs adopt and incorporate by reference the following Causes of Action asserted against

the Defendants in the Master Complaint:

[X] COUNT II: NEGLIGENCE AND GROSS NEGLIGENCE (Against UniFirst);

[X] COUNT III: NEGLIGENCE AND GROSS NEGLIGENCE (Against Clinic Related Defendants);

[X] COUNT IV: VIOLATION OF CONSUMER PROTECTION STATUTES (Against Clinic Related Defendants);

Plaintiff alleges violation of the following consumer protection statutes: the Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101 *et seq.*

[X] COUNT VI: VIOLATION OF M.G.L.C. 93A (Against UniFirst)

[X] COUNT VII: BATTERY (Against Clinic Related Defendants)

[X] COUNT VIII: FAILURE TO WARN (Against Clinic Related Defendants)

[X] COUNT IX: TENNESSEE PRODUCTS LIABILITY CLAIMS (Against Tennessee Clinic Related Defendants)

[X] COUNT X: AGENCY (Against Clinic Related Defendants)

[X] COUNT XI: CIVIL CONSPIRACY (Against Clinic Related Defendants)

[] COUNT XII: WRONGFUL DEATH PUNITIVE DAMAGES (Against UniFirst and Clinic Related Defendants)

[X] COUNT XIII: LOSS OF CONSORTIUM (Against UniFirst and Clinic Related Defendants)

[X] COUNT XIV: PUNITIVE DAMAGES (Against UniFirst and Clinic Related Defendants)

8. Plaintiffs complied with the applicable state law pre-suit requirements for filing this Short Form Complaint required under Tenn. Code Ann. § 29-26-121 and 29-26-122 within the time periods required under Tennessee law. An Affidavit establishing such compliance is attached hereto as **Exhibit A** and a Certificate of Good Faith signed by the undersigned

counsel is attached hereto as **Exhibit B**. Both exhibits are incorporated herein by reference.

9. Plaintiff, DENIS BROCK, has suffered and will continue to suffer the following injuries as a result of the administration of NECC's drug: bodily injury, pain and suffering, medical expenses, and loss of enjoyment of life, as a result of contracting fungal meningitis.
10. Plaintiff, JERRY BRANDT BROCK, has and will continue to suffer the following injuries as a result of the administration of NECC's drug: loss of spousal support, mental anguish, medical expenses, and all other damages to which he may be entitled.

WHEREFORE, Plaintiffs demand Judgment against the Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such further relief as the Court deems equitable and just, and further, pursuant to Tenn. Code Ann. §29-28-107, Plaintiff prays for damages in an amount not to exceed \$10,000,000.00.

Plaintiffs reserve the right to amend this Complaint to add allegations and claims against individuals or entities currently omitted (in light of the Court's order permitting a Master Complaint naming Defendants affiliated with NECC and currently participating in mediation by December 20) and to add or amend allegations against Defendants named herein based, in part, on further discovery.

JURY DEMAND

Plaintiffs hereby demand a trial by a jury.

Respectfully submitted,

DENIS and JERRY BRANDT BROCK,

By their Attorneys,

GALLIGAN & NEWMAN

By: /s/ Michael D. Galligan

Michael D. Galligan #3181

Pro Hac Vice Admission

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